

HOUSE No. 398

By Mr. Fresolo of Worcester, petition of John P. Fresolo and others for legislation to create a rebuttable presumption of job relatedness for certain public employees in the Commonwealth suffering from certain disabling conditions caused by exposure to an infectious disease. Public Service.

The Commonwealth of Massachusetts

PETITION OF:

John P. Fresolo Joan M. Menard
SEIU - 5000 NAGE

In the Year Two Thousand and Five.

AN ACT CREATING A REBUTTABLE PRESUMPTION OF JOB RELATEDNESS FOR CERTAIN PUBLIC EMPLOYEES IN THE COMMONWEALTH SUFFERING FROM CERTAIN DISABLING CONDITIONS CAUSED BY EXPOSURE TO AN INFECTIOUS DISEASE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 26 of chapter 31 of the General Laws, as
2 appearing in the 2000 Official Edition, is hereby amended by
3 striking out, in line eighty-nine, the words “and ninety-four B”
4 and inserting in place thereof the following words:— ninety-four
5 B and ninety-four C.

1 SECTION 2. Section 1 of Chapter 32 of the General Laws, as
2 appearing in the 1992 Official Edition, is hereby amended by
3 including after the words “permanent employees”, in line 242, the
4 following:— For the purposes of the presumption provided in
5 Section 94C of this chapter, “employees” shall include and mean,
6 but not be limited to, the following:— uniformed members of paid
7 fire departments and permanent members of police departments,
8 members of the police force of the Massachusetts Bay Transporta-
9 tion Authority or the Department of State Police, corrections offi-

10 cers and personnel whose regular or incidental duties require the
11 care, supervision, or custody of prisoners, crash crewmen, crash
12 boatmen, fire controlmen and assistant fire controlmen at the
13 General Edward Lawrence Logan International Airport, emer-
14 gency medical technicians, paramedics, physicians, assistant
15 physicians, dentists, dental assistants and hygienists, nurses, nurse
16 practitioners, unlicensed nurse assistants and technicians, social
17 workers, employees of clinical and/or diagnostic laboratories,
18 employees of facilities for the disabled or mentally ill, or any
19 other public safety officials or public health care professionals
20 whose regular, incidental, or assigned duties to protect the health
21 and safety of the public may lead to or involve an occupational
22 exposure to blood or other infectious material.

1 SECTION 3. Chapter 32 of the General Laws is hereby
2 amended by inserting after section ninety-four B, as so appearing,
3 the following section:—

4 Section 94C. (1) Notwithstanding the provisions of any general
5 or special law to the contrary, any condition of hepatitis B, human
6 immunodeficiency virus and tuberculosis, resulting in total dis-
7 ability or death to an employee, as defined in Section 1 of this
8 chapter, shall be presumed to have been suffered in the line of
9 duty, unless it is shown by a preponderance of the evidence that
10 non-service connected risk factors or non-service connected acci-
11 dents or hazards undergone, or any combination thereof, caused
12 such incapacity; provided, however, that the appointing authority
13 of the commonwealth or one of its political subdivisions may
14 require any new hire to be tested for such infectious disease in
15 order to be eligible for the benefit provided by this section. If such
16 new hire refuses to be tested, said new hire shall be ineligible for
17 the benefit provided by this section; provided, further, that such
18 testing shall be conducted in accordance with Section 70F of
19 Chapter 111 of the General Laws. The provisions of this section
20 shall only apply if the disabling or fatal condition is a type of
21 infectious disease which may, in general, result from occupational
22 exposure to blood and other body fluids or to infectious tubercu-
23 losis. If the appointing authority provides an inoculation, which
24 has been approved by the commissioner of public health, which
25 may prevent the acquiring of an infectious disease defined by this

26 section and the employee refuses to receive such inoculation said
27 employee shall be ineligible for the benefit provided by this
28 section.

29 (2) The provisions of this section shall not apply to any person
30 serving in such position for fewer than six months at the time that
31 such condition is first discovered, or should have been discovered.
32 Any person first discovering any such condition within six months
33 of the last date on which such person actively so served shall be
34 eligible to apply for benefits hereunder, and such benefits, if
35 granted, shall be payable as of the date on which the employee
36 last received regular compensation. The provisions of this section
37 shall not apply to any person serving in such position unless such
38 person shall first establish that he has responded to a call where he
39 may have been exposed.

40 (3) The provisions of this section shall also apply to other
41 infectious diseases, other than those listed in subdivision (1),
42 which, in general, may result from an occupational exposure, as
43 determined by the commissioner of the department of public
44 health and designated by regulation with the provisions provided
45 in section one of this chapter.

46 (4) Nothing herein shall preclude a member from applying for
47 and receiving benefits under section seven or section nine, subject
48 to the provisions of said sections.

49 (5) The appointing authority may require employees who have
50 been exposed to blood or other infectious material to file an inci-
51 dent report with the appointing authority detailing the possible
52 exposure.

1 SECTION 4. Section 100 of said chapter 32, as so appearing, is
2 hereby amended by striking out, in line eighty-one, the words
3 “and ninety-four B” and inserting in place thereof the following
4 words:— ninety-four B and ninety-four C.

1 SECTION 5. The provisions of this act shall apply only to a
2 person actively employed, as provided in Section 1 of Chapter 32,
3 on or after the effective date of this act.

1 SECTION 6. The provisions of section three shall not be con-
2 strued to affect the interpretation of the provisions of said sections

3 ninety-four, ninety-four A or ninety-four B of chapter thirty-two
4 of the General Laws.

1 SECTION 7. The provisions of this act shall be effective in
2 every retirement system established by or operating under the pro-
3 visions of chapter thirty-two of the General Laws or under the
4 similar provisions of any other general or special law, and for
5 every governmental unit which is a member of such retirement
6 system, notwithstanding the provisions of section twenty-seven C
7 of the General Laws.